

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

2019 AUG 26 AM 11:57

DEPUTY CLERK PL

UNITED STATES OF AMERICA

NO. 3:18-CR-00432-K

v.

RAFAEL RUBI (2)

FACTUAL RESUME

In support of Rafael Rubi's plea of guilty to Counts One, Two, and Three of the Superseding Information, Rubi, the defendant, Heath Harris, the defendant's attorney, and the United States of America (the "government") stipulate and agree to the following:

ELEMENTS OF THE OFFENSES

Count One

Possession with Intent To Distribute a Controlled Substance
(Violation of 21 U.S.C. § 841(a)(1))

To prove the offense alleged in Count One of the Superseding Information, charging Possession with Intent To Distribute a Controlled Substance, a violation of 21 U.S.C. § 841(a)(1), the penalty for which is found at 21 U.S.C. § 841(b)(1)(C), the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant knowingly possessed a controlled substance;

Second, that the substance was in fact a mixture or substance containing a detectable amount of heroin; and

Third, that the defendant possessed the substance with the intent to distribute it.¹

¹ Based on Fifth Circuit Pattern Jury Instruction (Crim.) 2.93 (2015).

Count Two

Possession of a Firearm in Furtherance of a Drug Trafficking Crime
(Violation of 18 U.S.C. § 924(c)(1)(A)(i))

To prove the offense alleged in Count Two of the Superseding Information, charging Possession of a Firearm in Furtherance of a Drug Trafficking Crime, a violation of 18 U.S.C. § 924(c)(1)(A)(i), the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant committed the drug trafficking crime alleged in Count One; and

Second, that the defendant knowingly possessed a firearm in furtherance of the defendant's commission of the crime charged in Count One.²

Count Three

Possession of a Firearm and Ammunition by a Convicted Felon
(Violation of 18 U.S.C. § 922(g)(1))

To prove the offense alleged in Count Three of the Superseding Information, charging Possession of a Firearm and Ammunition by a Convicted Felon, a violation of 18 U.S.C. § 922(g)(1), the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant knowingly possessed a firearm and ammunition as charged;

Second, that before the defendant possessed the firearm and ammunition, he had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;

Third, that the defendant knew he had been convicted of such a crime at the time he possessed the firearm; and

Fourth, that the firearm and ammunition possessed traveled in interstate commerce; that is, before the defendant possessed the firearm and

² Based on Fifth Circuit Pattern Jury Instruction (Crim.) 2.44 (2015).

ammunition, the firearm and ammunition had traveled at some point from one state to another.³

STIPULATED FACTS

The Search Warrant

1. Rafael Rubi admits and agrees that, on or about April 18, 2018, in the Dallas Division of the Northern District of Texas, he and Alexis Ortiz, aiding and abetting each other, did knowingly and intentionally possess with intent to distribute a mixture or substance containing a detectable amount of heroin, a schedule I controlled substance.

2. On April 18, 2018, Dallas police officers executed a search warrant at 200 Jellison Boulevard, #XXXX, Dallas, Texas, where Rafael Rubi and Alexis Ortiz resided. During the execution of the search warrant, officers recovered heroin, methamphetamine, powder cocaine, crack cocaine, alprazolam, marijuana, and a drug ledger, digital scales, and baggies. Rubi admits and agrees that he knowingly possessed these substances with the intent to distribute them.

3. During the execution of the search warrant, officers recovered a Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944, from the toilet tank in Rubi's apartment. The officers also recovered approximately 88 rounds of 9 millimeter ammunition; a Ruger .380 caliber pistol, bearing serial number 371345961; and approximately 132 rounds of .45 caliber ammunition.

³ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2015); *Rehaif v. United States*, ___ S.Ct. ___, 2019 WL 2552487 (U.S. June 21, 2019).

4. Rafael Rubi admits and agrees that, on or about April 18, 2018, in the Dallas Division of the Northern District of Texas, he did knowingly possess a Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944; and a Ruger .380 caliber pistol, bearing serial number 371345961, in furtherance of a drug trafficking crime, namely, Possession with Intent to Distribute a Controlled Substance, as charged in Count One of the Superseding Information. Rubi further admits and agrees that, on or about April 18, 2018, in the Dallas Division of the Northern District of Texas, having been convicted of a crime punishable by imprisonment for a term exceeding one year, he did knowingly and unlawfully possess in and affecting interstate and foreign commerce those two firearms.

5. During the execution of the search warrant, officers also recovered Rafael Rubi's driver's license, several items of personal mail addressed to Rubi, and a Walgreen's prescription made out to Rubi. Rubi admits and agrees that he resided at 200 Jellison Boulevard, #XXXX, Dallas, Texas, and that he maintained this premises for the purpose of distributing controlled substances.

The Traffic Stop

6. Rafael Rubi admits and agrees that, on or about April 17, 2018, in the Dallas Division of the Northern District of Texas, he and Aaron Williams, aiding and abetting each other, both having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly and unlawfully possess in and affecting interstate and foreign commerce a firearm, to wit: a Glock, model 30, .45 caliber pistol, bearing serial number SKA280.

7. On April 17, 2018, at approximately 11:17 p.m., Dallas police officers performed a traffic stop on a 2011 black Ford Mustang traveling southbound at 7400 Marvin D. Love Freeway. There were three occupants in the vehicle: Rafael Rubi (the driver), Aaron Williams (the rear passenger), and a juvenile male (the front passenger).

8. As the first officer approached the driver's side of the vehicle, he smelled a strong odor of marijuana and ordered Rubi to exit the vehicle. As the second officer approached the passenger side of the vehicle, he observed Williams making furtive movements toward the floorboard. When the officer opened the passenger door to have the occupants step out of the vehicle, he observed, lying in plain view at Williams's feet, a Glock, model 30, .45 caliber pistol, bearing serial number SKA280. The firearm had one live round in the chamber. A probable cause search of the vehicle was conducted, and a magazine containing nine live rounds was recovered from the rear passenger seat.

9. Rubi admits and agrees that he knowingly possessed the Glock, model 30, .45 caliber pistol, bearing serial number SKA280, and the ammunition recovered with that firearm. Rubi admits and agrees that, just before the vehicle came to a complete stop, he handed the firearm to Williams and told him to hide it. At that time, Williams took possession of the gun, took the magazine out, and attempted to place the gun under the front passenger seat while sitting on the magazine.

The Drive-By Shootings

10. Rafael Rubi admits and agrees that, on or about April 17, 2018, in the Dallas Division of the Northern District of Texas, having been convicted of a crime punishable by imprisonment for a term exceeding one year, he did knowingly and

unlawfully possess in and affecting interstate and foreign commerce a firearm and ammunition, to wit: a Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944; approximately seven rounds of Tulammo 9 millimeter ammunition; a Glock, model 30, .45 caliber pistol, bearing serial number SKA280; and approximately five rounds of Federal .45 caliber ammunition. Specifically, Rubi admits and agrees that he possessed those firearms and ammunition while he was engaged in a drive-by shooting.

11. On April 17, 2018, at approximately 1:28 a.m., Dallas police officers were dispatched to the scene of a drive-by shooting at XXX S. Moore Street, Dallas, Texas. The complainant stated that he was suddenly awoken by the sounds of gunfire outside, and that he rolled out of bed and pulled the mattress over him because he feared for his life. One of the bullets entered the complainant's bedroom and hit a bookshelf a couple feet away from him. After the shooting stopped, the complainant checked to see if everyone in the house was unharmed and then went outside, where he discovered that the front of the house and the vehicles parked in front of the house had sustained damage from multiple bullet strikes.

12. On April 17, 2018, at approximately 2:23 a.m., the complainant's sister, who was asleep in the back bedroom at the time of the shooting, received the following string of phone calls and text messages on her cell phone (469-989-XXXX):

- 4/17/2018 at 2:23:08 a.m.
 - Phone call to 469-989-XXXX
- 4/17/2018 at 2:23:43 a.m.
 - Text message: "Bitch answer b4 answer b4 I cum bck"
- 4/17/2018 at 2:24:25 a.m.
 - Text message: "Get at me asap hoe"
- 4/17/2018 at 2:24:48 a.m.

- Text message: "GANG shit"
- 4/17/2018 at 2:25:56 a.m.
 - Text message: "Ima Hitta ur mama next"
- 4/17/2018 at 2:25:56 a.m.
 - Text message: "Call me now"
- 4/17/2018 at 2:31:15 a.m.
 - Text message: "U here me hoe"
- 4/17/2018 at 2:31:45 a.m.
 - Text message: "I'm not play play"
- 4/17/2018 at 2:43:24 a.m.
 - Phone call to 469-989-XXXX

Officers later obtained a search warrant for Rafael Rubi's cell phone. The results of that search warrant confirmed that the foregoing string of phone calls and text messages was sent from Rubi's cell phone.

13. Approximately 12 fired cartridge casings were recovered from the scene of the shooting, including five Federal .45 caliber cartridge casings and seven Tulammo 9 millimeter cartridge casings. The National Integrated Ballistic Information Network (NIBIN) confirmed that the .45 caliber casings were fired by the Glock, model 30, .45 caliber pistol, bearing serial number SKA280, that was recovered from Rubi's vehicle approximately 20 hours after the shooting. NIBIN also confirmed that the 9 millimeter casings were fired by the Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944, that was recovered from the toilet tank in Rubi's apartment.

14. Rafael Rubi admits and agrees that, on or about April 13, 2018, in the Dallas Division of the Northern District of Texas, having been convicted of a crime punishable by imprisonment for a term exceeding one year, he did knowingly and unlawfully possess in and affecting interstate and foreign commerce a firearm and ammunition, to wit: a Glock, model 19, 9 millimeter pistol, bearing serial number

BAVN944; approximately 15 rounds of Tulammo 9 millimeter ammunition; a Glock, model 30, .45 caliber pistol, bearing serial number SKA280; and approximately nine rounds of Tulammo .45 caliber ammunition. Specifically, Rubi admits and agrees that he possessed those firearms and ammunition while he was engaged in a drive-by shooting.

15. On April 13, 2018, at approximately 4:50 a.m., Dallas police officers responded to the scene of a drive-by shooting at XXXX Salerno Drive, Dallas, Texas. The complainant stated that he heard multiple gunshots outside his residence. After the shooting stopped, the complainant went outside, where he discovered that the front of the house and the vehicles parked in front of the house had sustained damage from multiple bullet strikes.

16. The complainant was previously involved in a car accident with Alexis Ortiz, Rafael Rubi's girlfriend, in or around July 2017. Rubi arrived at the scene of the accident and demanded immediate payment. After the complainant said he would not pay him, the parties left the scene. In or around September 2017, Rubi and Ortiz showed up at a garage sale hosted by the complainant's family. Rubi began yelling at the family, demanded money, and stated that they would regret not paying him.

17. Officers later obtained a search warrant for Rubi's cell phone following his arrest. The contents of Rubi's cell phone included a picture of the complainant's insurance card with the XXXX Salerno Drive address listed on it.

18. Approximately 38 fired cartridge casings were recovered from the scene of the shooting, including nine Tulammo .45 caliber cartridge casings and 15 Tulammo 9 millimeter cartridge casings. NIBIN confirmed that the .45 caliber casings were fired

by the Glock, model 30, .45 caliber pistol, bearing serial number SKA280, that was recovered from Rubi's vehicle. NIBIN also confirmed that the 9 millimeter casings were fired by the Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944, that was recovered from the toilet tank in Rubi's apartment.

19. Rafael Rubi admits and agrees that, on or about March 19, 2018, in the Dallas Division of the Northern District of Texas, having been convicted of a crime punishable by imprisonment for a term exceeding one year, he did knowingly and unlawfully possess in and affecting interstate and foreign commerce a firearm and ammunition, to wit: a Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944; and approximately 10 rounds of Tulammo 9 millimeter ammunition. Specifically, Rubi admits and agrees that he possessed that firearm and ammunition while he was engaged in a drive-by shooting.

20. On March 19, 2018, at approximately 4:00 a.m., Dallas police officers responded to the scene of a drive-by shooting at XXXX Crepe Myrtle Lane, Dallas, Texas, which was shot multiple times. At least four bullets entered the front living room windows and were buried in the inside living room walls.

21. The complainant was interviewed and stated that, prior to the shooting, she got into a physical fight with Alexis Ortiz and another woman who is close to Rubi and other members of the criminal street gang La Familia Homeboy. Rubi admits and agrees that he is a member of the criminal street gang La Familia Homeboy.

22. Approximately 46 fired cartridge casings were recovered from the scene of the shooting, including 10 Tulammo 9 millimeter cartridge casings. NIBIN confirmed

that the 9 millimeter casings were fired by the Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944, that was recovered from the toilet tank in Rubi's apartment.

23. Rafael Rubi admits and agrees that, on or about February 11, 2018, in the Dallas Division of the Northern District of Texas, having been convicted of a crime punishable by imprisonment for a term exceeding one year, he did knowingly and unlawfully possess in and affecting interstate and foreign commerce a firearm and ammunition, to wit: a Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944; approximately 18 rounds of Winchester 9 millimeter ammunition; approximately four rounds of Hornady 9 millimeter ammunition; and approximately one round of Remington 9 millimeter ammunition. Specifically, Rubi admits and agrees that he possessed that firearm and ammunition while he was engaged in a drive-by shooting.

24. On February 11, 2018, at approximately 3:12 a.m., Dallas police officers responded to the scene of a drive-by shooting at XXX Nolte Drive, Dallas, Texas, which was shot multiple times. The complainant stated that, after the shooting stopped, she came outside and observed multiple bullet holes in the house and the vehicle parked in front of the house. One of the bullets entered the window of the living room, where a juvenile witness was sleeping at the time of the shooting.

25. The victims of the February 11 shooting are relatives of the complainant in the April 13 shooting, who was involved in the car accident with Alexis Ortiz. The residence at XXX Nolte Drive was the location of the garage sale where Rubi threatened the complainant's family.

26. Approximately 23 fired cartridge casings were recovered from the scene of the shooting, including 18 WIN 9 millimeter casings, 4 Hornady 9 millimeter casings, and 1 R-P 9 millimeter casing. NIBIN confirmed that the 9 millimeter casings were fired by the Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944, that was recovered from the toilet tank in Rubi's apartment.

Interstate Nexus

27. The Glock, model 30, .45 caliber pistol, bearing serial number SKA280, was not manufactured in the State of Texas. The firearm therefore traveled in interstate or foreign commerce in order to be present in Texas.

28. The Glock, model 19, 9 millimeter pistol, bearing serial number BAVN944 was not manufactured in the State of Texas. The firearm therefore traveled in interstate or foreign commerce in order to be present in Texas.

29. The rounds of 9 millimeter ammunition and .45 caliber ammunition that were recovered from the scenes of the shootings described above were not manufactured in the State of Texas. The ammunition therefore traveled in interstate or foreign commerce in order to be present in Texas.

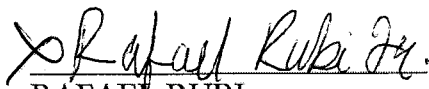
Prior Felony Conviction

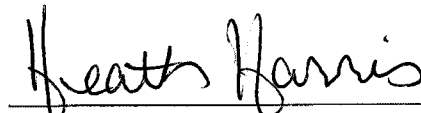
30. Prior to February 11, 2018, Rafael Rubi was convicted of a felony offense punishable by a term of imprisonment in excess of one year. Prior to February 11, 2018, and continuing to on or about April 18, 2018, Rubi knew that he had been convicted in a court for a crime punishable by imprisonment for a term exceeding one year, that is, a felony offense.

Conclusion

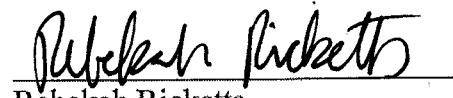
31. Rafael Rubi agrees that he committed all the essential elements of the offenses to which he is pleading guilty. This factual resume is not intended to be a complete accounting of all the facts and events related to the offenses charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Counts One, Two, and Three of the Superseding Information.

AGREED TO AND STIPULATED on this 26th day of August, 2019.


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Defendant


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